

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
And 777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network)	
in the 700 MHz Band)	

COMMENTS OF WIREFREE PARTNERS III, LLC

Wirefree Partners III, LLC, (“Wirefree Partners”) hereby submits its comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceedings (the “Further Notice”). Wirefree Partners encourages the Commission to take additional measures beyond those proposed in the Further Notice to ensure that new entrants have a true and fair opportunity to acquire spectrum in the 700 MHz auction. If the 700 MHz auction is to achieve the goal of injecting new competition into the wireless industry and promoting vibrant spectrum use the rules must go beyond a mere mix of geographic licensed markets and bidding credits to promote small business participation.

The FCC’s auction rules for the 700 MHz auction should include a waiver or stay of the line of business restrictions imposed on Designated Entities (“DE”) in the DE rules adopted just prior to the auction of Advanced Wireless Spectrum (“AWS”) spectrum. The Commission should tie any DE unjust enrichment penalty to the build-out requirements and not impose the ten year unjust enrichment penalty used for AWS

licenses which do not have a mid-term build out requirement. Finally, the Commission should treat all new entrants and small businesses equally to ensure the integrity of the auction process.

I. The DE Line of Business Restrictions, if Left Unchanged, will Chill Small Business Participation in the 700 MHz Auction

Spectrum in the 700 MHz band is viewed almost universally as “beachfront property” that holds the promise for delivering expanded wireless services to American consumers. As the FCC Chairman and Commissioners acknowledged in the Further Notice¹ and as recognized by members of Congress in recent hearings,² there is a strong national interest in promoting licensing and use of this spectrum by new entrants capable of providing a “third” broadband pipe. As in many other industries, innovation and competition in wireless services are often driven by the entry of new and competitive entrants started by entrepreneurs. Start up companies founded by entrepreneurs can only answer the call for additional competition, however, if the auction rules are flexible enough to allow entrepreneurs to pursue all lines of business. This includes the flexibility to offer wholesale wireless services, enter into spectrum leases and create strategic relationships with large companies without the risk of improper affiliation. Similarly in order for competition to develop, DEs must also be able to grow, expand and adapt their spectrum-based businesses without facing ten year unjust enrichment penalties.

¹ See Statements of Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell on the Further Notice.

² U.S. House Committee on Energy and Commerce. *Digital Future of the United States: Part III: Spectrum Opportunities and the Future of Wireless: Hearing before the Subcommittee on Telecommunications and the Internet*. 110th Congress, 1st sess., 19 April, 2007

If the FCC applies the current DE rules to the 700 MHz auction, it will inhibit rather than promote auction participation by small businesses and entrepreneurs. The AWS auction results show that a geographic mix of licenses and bidding credits are not enough to promote new entry into urban and valuable markets. As shown in the FCC's final auction report of top AWS licenses (a copy is attached as Exhibit A), the ten most expensive AWS licenses in each of the geographic market areas - CMAs, BEAs, and REAs -- were all won by large bidders and not by DEs.³ Only two of the 18 AWS licenses awarded in the six major REAs were won by bidders that bid as DEs. Indeed, most of the AWS licenses in the major markets were won by incumbent carriers or cable providers. Consequently, the AWS auction did not produce a new regional or national wireless competitor despite having a mix of different geographic license areas.

In the spirit of American entrepreneurship, new companies have been formed to acquire 700 MHz spectrum and have begun the arduous process of raising start-up capital. Many of these companies are seeking innovative ways to offer service. As demonstrated by the proposals of Frontline Wireless, Cyren Call and most recently Google, a "wholesale-only" model and the lease or real time auction of spectrum hold the promise to allow more vibrant use of spectrum by a wider range of entities than the pure facilities-based, retail model. Even for the large wireless carriers, the wholesale model is proving to be an important source of subscriber growth.⁴ The wholesale models also offer consumers additional choices in wireless retail competition. New entrants need the same flexibility as large carriers to adopt "wholesale-only" and leasing models.

³ See FCC Auction 66 Top Licenses Report (Round 161).

⁴ In its Fourth Quarter 2006 Financial Results, Sprint reported that 6 million of its 51 million wireless customers were wholesale customers. Sprint added 803,000 wholesale customers in the fourth quarter alone. Sprint Investor Quarterly Update, 2/28/07 (http://www2.sprint.com/mr/news_dtl.do?id=15540).

Unfortunately, for true new entrants the FCC's DE rules unnecessarily cut off many of these laudable uses of spectrum. The direct consequence of the DE line of business restrictions is evident from the Commission's proper conclusion in the Further Notice that absent a change to the DE rules, the innovative proposal of Frontline Wireless is an invalid business model for a DE bidder seeking a bidding discount.⁵

II. Small Businesses Are a Vital Part of the US Economy and Should Fully Participate in Spectrum Auctions and the Wireless Industry

A low level of participation in the auction by small businesses will thwart the auction parameters set forth in Section 309(j) of the Communications Act. In addition, rules that inhibit small business participation in spectrum auctions ignore the contribution that small businesses make to job growth and the overall health of the U.S. economy. As set forth in Section 309(j) of the Communications Act the FCC is required to design auction rules that achieve the goal of “disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁶ The Act also requires that the FCC design auction regulations to ensure that those same entities – small businesses, rural telephone companies, and businesses owned by members of minority groups and women – “are given the opportunity to participate in the provision of spectrum-based services.”⁷

The stellar contribution of small businesses and women entrepreneurs as an engine for economic growth has not been replicated in the acquisition of spectrum licenses in recent FCC auctions. According to the Office of Advocacy of the Small Business Administration (“SBA”), small businesses generated 60 to 80% of the new jobs

⁵ Further Notice at ¶287.

⁶ 47 U.S.C. §309(j)(3)(B).

⁷ 47 U.S.C. §309(j)(4)(C)(ii).

in the U.S. annually during the last decade. More than 45% of the private payroll in the U.S. is by small business employers. In addition, small businesses are leaders in innovation. SBA reports that small businesses receive 13 to 14 times more patents per employee than larger patenting firms.⁸ The last Census found that in 2002, women owned 6.5 million businesses in the U.S. and that these women-owned firms generated over \$940 Billion in revenues while employing 7.1 million workers. Without changes to the DE rules, the small business engine of growth will not be present in the wireless industry.

The current DE rules make it extremely difficult for start up enterprises and small businesses to build successful business models and raise the money necessary to bid in a spectrum auction especially an auction for valuable spectrum like that in the 700 MHz band. In light of : (i) the recent AWS auction results, (ii) the market evolutions in the wireless industry that validate wholesale and leasing service models, and (iii) the expected level of competitive bidding in the 700 MHz auction, the Commission should waive or stay the current DE rules from application in this auction.

III. The Build-Out/Performance Requirements Eliminate the Need for Lengthy Unjust Enrichment Penalties

The Commission has proposed highly aggressive build-out requirements for 700 MHz licensees. These requirements will be challenging for new entrants seeking to build wireless networks in a substantial geographic footprint whether regional or nationwide. Wirefree Partners encourages the Commission to set coverage and performance requirements at the fifth and tenth anniversary of the license term similar to those used for PCS licenses. The Commission should stringently enforce these deadlines.

⁸ See Frequently Asked Questions, www.sba.gov/advo/.

The FCC's decision to condition licenses on meeting a build-out requirement eliminates the need to apply an unjust enrichment penalty that exceeds the five year license anniversary. In the recent revision to the DE rules, the Commission extended the period in which the unjust enrichment penalty applies from years 1 through 5 to years 1 through 10.⁹ This penalty is applied if there is a change of control of a DE or the DE enters into an "impermissible material relationship" even if the build-out and performance requirements are met and the DE is operating a facilities-based network and providing service to the public. The Commission's stated reason for extending the unjust enrichment period was to "increase the probability that designated entities will develop into facilities-based providers of services to the public."¹⁰ Significantly, the AWS service rules did not include a build-out requirement until the end of the license term. The Commission's proposal to include a build-out requirement, and an aggressive one, for 700 MHz licensees eliminates this rationale for a longer unjust enrichment penalty period.

If applied the ten year unjust enrichment penalty will drive many DEs away from the auction rather than encourage them to bid and become facilities-based providers of wireless services. Rules that mandate holding periods longer than five years make it extremely difficult for entrepreneurs and new entrants to attract the type of investors and amount of investment necessary to build a successful wireless business. Six to ten years is an extremely long period and too long for early stage venture investors and in the wireless industry. Venture firms typically provide the beginning funding for

⁹ 47 C.F.R. §1.2111(d)(2).

¹⁰ *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Order on Reconsideration of the Second Report and Order, at ¶40.

entrepreneurs and new entrants as demonstrated by the investor roster of Frontline Wireless and M2Z Networks. Wirefree Partners' equity funding for its participation in Auction 58 also came from two leading venture capital firms. Venture capital firms typically have a three to seven year investment horizon and individual venture funds are typically time limited to ten years. A ten year time horizon for an investment is not something that is attractive for this commonly used form of funding. Similarly, as competitive new entrants grow and expand their service offerings they will need to raise additional capital – a task made all the more difficult by having to maintain a set DE status for ten years or face a significant penalty. Accordingly, the Commission should not apply the longer unjust enrichment penalties to DEs that acquire spectrum in the 700 MHz auction.

IV. The Commission Should Apply the DE Rules Equally to All New Entrants Seeking A Bidding Discount

The Commission's auction rules should create a level playing field for all new entrants. The integrity of the auction process is critical. A fair auction requires rules that apply equally to all small bidders. The bidding discounts, a hallmark of the DE program, should be available to all entities that meet the revenue and assets tests for eligibility. All DEs should have the flexibility to develop different service offerings and enter different lines of business. The Commission should resist the call to create special categories, beyond business size, for bidding credits and other preferences and give all new entrants

and equal and fair opportunity to acquire spectrum in the auction. As set forth herein, Wirefree Partners encourages the FCC to waive or stay the revised DE rules for all bidders that qualify as designated entities in the 700 MHz auction.

Respectfully submitted,

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EXHIBIT A

FCC Advanced Wireless Services Auction No. 66 *** Final ***

Round: 161

Service **AWS**

	#of Lic.	PWBs* (Gross)	PWBs* (Net)	FCC Held	New PWBs*	Licenses w/PWBs*	Bids Placed
BEA	352	\$3,938,533,000	\$3,898,549,100	7	0	345	0
CMA	734	\$2,268,029,200	\$2,247,017,800	22	0	712	0
REA	36	\$7,672,548,000	\$7,554,700,250	6	0	30	0
Totals:	1,122	13,879,110,200	\$13,700,267,150	35	0	1,087	0

Top 10 Licenses by Provisionally Winning Bid (Net)

Service: AWS		Geo. Desc. BEA		Round: 161			
Lic. Name	Market Name	PW Bidder	Round of PWB*	Pops	PWB* (Net)	PWB* (Gross)	
AW-BEA010-B	NYC-Long Is. NY-NJ-CT	SpectrumCo LLC	20	25,712,577	\$468,178,000	\$468,178,000	
AW-BEA010-C	NYC-Long Is. NY-NJ-CT	MetroPCS AWS, LLC	41	25,712,577	\$363,945,000	\$363,945,000	
AW-BEA064-B	Chicago-Gary-Kenosha	SpectrumCo LLC	43	10,328,854	\$228,041,000	\$228,041,000	
AW-BEA160-B	LA-Riverside-Orange Cn	SpectrumCo LLC	32	18,003,420	\$215,620,000	\$215,620,000	
AW-BEA064-C	Chicago-Gary-Kenosha	Cingular AWS, LLC	53	10,328,854	\$162,082,000	\$162,082,000	
AW-BEA013-B	Wash.-Balt. DC-MD-VA	SpectrumCo LLC	47	8,403,130	\$148,708,000	\$148,708,000	
AW-BEA160-C	LA-Riverside-Orange Cn	T-Mobile License LLC	34	18,003,420	\$114,816,000	\$114,816,000	
AW-BEA163-B	San Fran.-Oakland-San	SpectrumCo LLC	46	9,111,806	\$80,834,000	\$80,834,000	
AW-BEA057-B	Detroit-Ann Arbor-Flint	SpectrumCo LLC	50	6,963,637	\$78,988,000	\$78,988,000	
AW-BEA012-B	Phil.-Atl. City PA-NJ-DE	SpectrumCo LLC	37	7,309,792	\$77,838,000	\$77,838,000	

Service: AWS		Geo. Desc. CMA		Round: 161			
Lic. Name	Market Name	PW Bidder	Round of PWB*	Pops	PWB* (Net)	PWB* (Gross)	
AW-CMA001-A	New York-Newark, NY-	T-Mobile License LLC	23	16,134,166	\$396,232,000	\$396,232,000	
AW-CMA003-A	Chicago, IL	T-Mobile License LLC	51	8,091,720	\$254,821,000	\$254,821,000	
AW-CMA002-A	Los Angeles-Anaheim,	Cingular AWS, LLC	33	15,620,448	\$179,161,000	\$179,161,000	
AW-CMA008-A	Washington, DC-MD-VA	Cricket Licensee (Reauctio	38	4,182,658	\$133,150,000	\$133,150,000	
AW-CMA004-A	Philadelphia, PA	Cricket Licensee (Reauctio	48	5,036,646	\$82,565,000	\$82,565,000	
AW-CMA005-A	Detroit-Ann Arbor, MI	T-Mobile License LLC	52	4,775,452	\$65,187,000	\$65,187,000	
AW-CMA009-A	Dallas-Fort Worth, TX	Cingular AWS, LLC	36	5,120,721	\$50,682,000	\$50,682,000	
AW-CMA014-A	Baltimore, MD	Cricket Licensee (Reauctio	52	2,512,431	\$43,657,000	\$43,657,000	
AW-CMA006-A	Boston-Brockton-Lowell,	T-Mobile License LLC	32	4,279,111	\$36,787,000	\$36,787,000	
AW-CMA012-A	Miami-Fort Lauderdale,	T-Mobile License LLC	32	3,876,380	\$35,633,000	\$35,633,000	

Service: AWS		Geo. Desc. REA		Round: 161			
Lic. Name	Market Name	PW Bidder	Round of PWB*	Pops	PWB* (Net)	PWB* (Gross)	
AW-REA001-F	Northeast	Cellico Partnership d/b/a Ve	16	50,058,090	\$1,335,374,000	\$1,335,374,000	
AW-REA006-F	West	T-Mobile License LLC	15	49,999,164	\$894,590,000	\$894,590,000	
AW-REA003-F	Great Lakes	Cellico Partnership d/b/a Ve	14	58,178,304	\$615,923,000	\$615,923,000	
AW-REA002-F	Southeast	Cellico Partnership d/b/a Ve	14	49,676,946	\$572,446,000	\$572,446,000	
AW-REA001-D	Northeast	MetroPCS AWS, LLC	18	50,058,090	\$552,694,000	\$552,694,000	
AW-REA001-E	Northeast	T-Mobile License LLC	17	50,058,090	\$472,553,000	\$472,553,000	
AW-REA005-F	Central	T-Mobile License LLC	15	40,343,960	\$470,290,000	\$470,290,000	
AW-REA006-E	West	Cingular AWS, LLC	15	49,999,164	\$362,757,000	\$362,757,000	
AW-REA003-E	Great Lakes	T-Mobile License LLC	19	58,178,304	\$356,780,000	\$356,780,000	
AW-REA006-D	West	MetroPCS AWS, LLC	14	49,999,164	\$355,726,000	\$355,726,000	

* PWBs = Provisionally Winning Bids